IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.123 OF 2006

Shri Albert Anthony Swamy. ..Petitioner.

V/s.

Shri Babulal J. Patil & Anr. ..Respondents.

Mr. J.M.Puranik for petitioner.

Ms.Shubha Kher for respondent No.1.

Mr.A.K.Jalsatgi for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : MAY 5, 2006.

P.C. :

1. Heard Counsel for the parties. Perused the relevant documents on record.

2. The grievance of the petitioner is about non-compliance of the direction contained in the order dated 21st July, 2005 passed by the Division Bench in L.P.A ST.No.15759 of 2005. Twofold directions have been given in the said order which were required to be complied with by the respondent No.1.

3. In so far as first direction regarding deposit of Rs.60,000/- is concerned, the same has

already been complied with. In fact, the petitioner has withdrawn the said amount.

4. The second direction was to provide work to the petitioner as per the statement made before the learned Single Judge by the respondent No.1 recorded in order dated 15th September, 2003. Assurance given before the learned Single Judge as noted in order dated 15th September, 2003 is as follows:

> "Petitioners shall provide work to the First respondent upon his reporting for work on the same basis on which work was provided to him in the past."(Petitioner before the Single Judge is respondent No.1 and respondent No.1 is petitioner before this court.)

5. On plain reading of this order, it is obvious that the respondent No.1 was required to provide work to the petitioner in the same manner as was provided in the past. The respondent No.1 has placed on record the details as to how the work was provided to the petitioner in the past, which can be discerned from the paragraph-6 of the reply. On perusing the said figures, it is obvious that work was provided to the petitioner by the respondent No.1 as and when

available. In paragraph-16 of the reply affidavit, respondent No.1 has placed on record the number of days worked by the petitioner after the order passed by the Single Judge on 15th September, 2003. In so far as particulars regarding number of days of work provided to the petitioner from September, 2003 till September, 2004 is mentioned in the chart in paragraph-6. Suffice it to observe that the pattern in which the work has been provided to the petitioner by the respondent No.1 has remained unchanged, as appeared in the past before the order came to be passed by the Single Judge of this Court. In other words, it is not a case of wilful disobedience of the order of the court for which reason contempt action should be initiated.

6. At this stage, counsel for the petitioner invited my attention to the order passed by the Industrial court, Thane dated 10th June, 2005 to contend that the direction contained in this order has not been complied with. Direction given by the Industrial Court in the said order reads thus:

"ORDER

i) The interim application at exh.U.2

stands allowed.

ii) The opponent No.2 contractor has been directed to submit the details of the back wages to which the applicant is entitled from 16.9.1997 till this date.

iii) The Opponent No.2 contractor has been directed to deposit with this Court, the entire amount of back wages to which the applicant employee is entitled from 16.9.1997 till this date.

iv) The opponent No.2 contractor is directed either to allow the applicant employee to report on work and disburse the wages against it or to continue to deposit wages of applicant employee with this Court, till the complaint is decided.

v) No order as to costs."

7. According to the respondent No.1 however, the direction contained in this order have merged in the order passed by the Division Bench dated 21st July, 2005, which order was invited by the parties as

recorded by the Division Bench. As the said order passed by the Division Bench is by consent, there is substance in the stand taken by the respondent No.1 that the order passed by the Division Bench being posterior to the order passed by the Industrial court, it presupposes that the parties were aware about the nature of resolution of the dispute interse when they invited the Division Bench to pass the said order. In the circumstances, no case for contempt action is made out.

8. Hence, petition dismissed. Notices issued to respondents are discharged.